IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 23127 of 2006(C)

PETITIONERS:

1. THANKAMMA, W/O. YOHANNAN,
   NEDIYAVILA VADAKKATHIL VEEDU,
   THURUTHIKKARA MURI, KUNNATHUR VILLAGE,
   KOLLAM DISTRICT.

2. MATHEW, S/O. YOHANNAN,
   NEDIYAVILA VADAKKATHIL VEEDU,
   THURUTHIKKARA MURI, KUNNATHUR VILLAGE,
   KOLLAM DISTRICT.

3. THOMAS, S/O. YOHANNAN,
   NEDIYAVILA VADAKKATHIL VEEDU,
   THURUTHIKKARA MURI, KUNNATHUR VILLAGE,
   KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR, KOLLAM.

2. THE SPECIAL TAHASILDAR,
   LAND ACQUISITION KIP NO.2, ADOOR.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE APPLICATION FILED BY KORUTHU YOHANNAN UNDER SECTION 28A OF THE LAND ACQUISITION ACT.

EXT.P2 TRUE COPY OF THE JUDGMENT DATED 16.2.1999 IN O.P.NO.1724/1999 OF THIS COURT.

EXT.P3 PHOTOCOPY OF THE DEATH CERTIFICATE OF KORUTHU YOHANNAN DATED 29.11.2000 ISSUED BY THE SECRETARY,. KUNNATHUR GRAMA PANCHAYATH.

EXT.P4 TRUE COPY OF THE JUDGMENT IN L.A.A.NO.190/1997 DATED 25/3/2003.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

ahz/

K.T. SANKARAN, J.

W.P.(C).NO. 23127 OF 2006

Dated this the 19th day of January,2007

JUDGMENT

The predecessor in interest of the petitioners herein, Koruthu Yohannan, filed Ext.P1 application under Section 28A of the Land Acquisition Act on 28.11.1996. The application under Section 28A was filed on the basis of the award passed in L.A.R.No.68 of 1987, Sub Court, Kollam, wherein the compensation was enhanced. Koruthu Yohannan died on 12.4.2000.

2. Since Ext.P1 application was not disposed of, Koruthu Yohannan filed O.P.No.1724 of 1999. That Original Petition was disposed of as per Ext.P2 judgment wherein the submission made by the learned Government Pleader was noted to the effect that the Land Acquisition Appeal was pending against the judgment on the basis of which Section 28A application was filed. The petitioners stated in the Writ Petition that L.A.A.No.190 of 1997 filed against L.A.R.No.68 of

1987 was disposed of on 25.3.2003 and even thereafter, ExtP1 application was not considered and disposed of.

3. The Special Tahsildar, Land Acquisition General, Pathanamthitta has filed a counter affidavit dated 21.11.2006 wherein it is stated thus:

> ".. On verification it is seen that an appeal against the judgment in L.A.R. as L.A.A.190/97 is pending before the Hon'ble High Court."

The petitioners have filed a reply affidavit wherein it is reiterated that L.A.A.No.190 of 1997 was disposed of on 25.3.2003. Petitioners have also produced as Ext.P4, a copy of the judgment in L.A.A.No.190 of 1997.

4. When it was stated in the Writ Petition that L.A.A.No.190 of 1997 was disposed of on 25.3.2003, the Special Tahsildar could not state in the counter affidavit that the appeal is pending, without verification. He stated in the counter affidavit that verification was made. Where it was verified is not stated. This averment appears to be incorrect and it

would appear that no verification was made by the Special Tahsildar. Since a copy of the judgment was produced along with the reply affidavit, it is clear that the reason for not disposing of Ext.P1 application is absolutely incorrect.

5. It is stated in the counter affidavit that the application filed by the petitioners would be considered on production of a copy of the judgment in the appeal. It is not necessary for the petitioners to produce a copy of the judgment in the Land Acquisition Appeal as it is not their duty to produce such a copy. It is for the Land Acquisition Officer to ascertain the fact whether the appeal is pending and to dispose of the application. No duty is cast on the petitioners to produce certified copy of the judgment. Therefore, this contention raised in paragraph 3 of the counter affidavit is absolutely without any merit.

Since Ext.P1 application is pending disposal, there will be a direction to the second respondent to

dispose of the same within a period of three months from today. The Writ Petition is allowed as above.

(K.T.SANKARAN)
Judge

ahz/